

11-9-2015

State v. Beery Appellant's Brief Dckt. 43221

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43221
Plaintiff-Respondent,)	
)	ADA COUNTY NOs.
v.)	CR 2014-6895 & CR 2014-8428
)	
)	
SHAWN PAUL BEERY,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

In separate cases consolidated in the district court, Shawn Beery pled guilty to one count of enticement of a child through the use of the internet and one count of sexual exploitation of a child, and he was sentenced to a total unified term of 25 years, with 5 years fixed. Mr. Beery asserts that the district court abused its discretion by imposing an excessive sentence in light of the mitigating factors that exist in his case.

Statement of the Facts & Course of Proceedings

Using his Facebook account, 25 year-old Shawn Beery arranged to meet with a person he believed to be a 14 year-old girl, but who in reality was a police detective, in

order to engage in sexual activity with the fictional child. (PSI, pp.3, 31.)¹ When arrested, Mr. Beery cooperated with the police and volunteered that he had sexually explicit images of young children on his phone. (PSI, pp.3-4.) The State filed separate complaints, one of which alleged that Beery committed enticement of a child through the use of the internet (CR 2014-6895) and the other alleging that Mr. Beery committed ten counts of sexual exploitation of a child (CR 2014-8428). (R., pp.8-9, 131-134.) The two cases were consolidated (although under separate district court case numbers), Mr. Beery waived his right to a preliminary hearing, was bound over into the district court, and informations were filed in each case charging him with the above crimes. (R., pp.39-41, 45-46, 54-55, 155-160, 164-167.)

Pursuant to an agreement with the State, Mr. Beery pled guilty to enticing a child through the use of the internet, and one of count sexual exploitation of a child; in exchange, the State agreed to dismiss the remaining charges and to recommend a total unified term of 25 years, with 5 years fixed. (R., pp.85-100, 195-210; Tr. 2/4/15.) During the sentencing hearing, counsel for Mr. Beery requested that the court impose an aggregate sentence of 15 years and to retain jurisdiction. (Tr. 4/15/15, p.28, L.19 – p.30, L.7.) However, the district court followed the State's recommendation and imposed a unified term of 15 years, with 5 years fixed, for the enticement of a child through the use of the internet conviction, and a consecutive 10-year indeterminate sentence for the exploitation of a child conviction, for a total unified term of 25 years,

¹ Citations to the Presentence Investigation Report and attached materials with include the designation "PSI" and the page numbers associated with the electronic file containing those documents.

with 5 years fixed. (R., pp.110-114, 220-224; Tr. 4/15/15, p.12, Ls.11-22; p.38, Ls.8-18.) Mr. Beery filed timely notices of appeal in each case. (R., pp.115-117, 225-227.)

ISSUE

Did the district court abuse its discretion when it imposed upon Mr. Beery a total unified term of 25 years, with 5 years fixed, in light of the mitigating factors that exist in his case?

ARGUMENT

The District Court Abused Its Discretion When It Imposed Upon Mr. Beery A Total Unified Term Of 25 Years, With 5 Years Fixed, In Light Of The Mitigating Factors That Exist In His Case

Mr. Beery asserts that, given any view of the facts, his total unified sentence of 25 years, with 5 years fixed, is excessive. Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review of the record giving consideration to the nature of the offense, the character of the offender, and the protection of the public interest. The governing criteria or objectives of criminal punishment are: (1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing.

Shawn Beery was born prematurely weighing only 1 pound, 8 ounces. (PSI, p.8.) Not being the eldest son she had hoped for, Mr. Beery's biological mother physically and psychologically abused him when he was a small child. (PSI, p.8.) He was also the victim of sexual molestation at the hands of his babysitter when he was between the ages of 7 and 9. (PSI, p.13.) Due to the trauma he suffered as a child, Mr. Beery had a psychiatric break when he was 15 and has been diagnosed with Post-

Traumatic Stress Disorder and anxiety. (PSI, p.13.) He also suffers from occasional auditory and visual hallucinations. (PSI, p.30.)

Unfortunately, Mr. Beery has also suffered from “chronic sexual deviancy issues dating back to adolescence,” and these issues are the root cause of the crimes he committed. (PSI, p.13.) He stated that he felt “like the lowest scum of the earth” and that he regretted his decisions and was remorseful. (PSI, p.5.) Mr. Beery participated in a psychosexual evaluation and, while the evaluator found that he was currently a high risk to re-offend, Mr. Beery was found to be amenable to treatment, especially if he were stabilized with psychotropic medication. (PSI, pp.26-64, 92-101.) Mr. Beery stated that he is “ready to start treatment and am willing to [do] what it takes to become a better person in society.” (PSI, p.15.) The likelihood of Mr. Beery being successful in the sex offender treatment he so badly needs is amplified by the fact that he enjoys the support of his family and friends. His father, step-mother, brother, sister-in-law, two adoptive sisters, and a family friend, all wrote letters in support of Mr. Beery. (PSI, pp.73-84.)

Idaho courts recognize that mental health issues, remorse, a willingness to seek treatment, and the support of family and friends, are all mitigating factors that should counsel a court to impose a less severe sentence. *See Hollon v. State*, 132 Idaho 573 (1999); *State v. Shideler*, 103 Idaho 593 (1982); *State v. Alberts*, 121 Idaho 204 (Ct. App. 1991); *State v. James*, 112 Idaho 239 (Ct. App. 1986). In light of the mitigating factors that exist in his case, Mr. Beery asserts that the district court abused its discretion by imposing an excessive sentence.

CONCLUSION

Mr. Beery respectfully requests that this Court reduce his sentence as it deems appropriate.

DATED this 9th day of November, 2015.

_____/s/_____
JASON C. PINTLER
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 9th day of November, 2015, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

SHAWN PAUL BEERY
INMATE #114749
ADAMS COUNTY JAIL
201 INDUSTRIAL AVENUE
COUNCIL ID 83612

CHERI C COPSEY
DISTRICT COURT JUDGE
E-MAILED BRIEF

AUGUST H CAHILL
ADA COUNTY PUBLIC DEFENDER
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

JCP/eas